

40 KAR 8:010. Nonparticipating manufacturer quarterly escrow deposit and certification.

RELATES TO: KRS 131.600-131.630.

STATUTORY AUTHORITY: KRS 131.620(2).

NECESSITY, FUNCTION, AND CONFORMITY: To promote compliance with KRS 131.602, KRS 131.620(2) authorizes the Attorney General to require nonparticipating tobacco manufacturers to quarterly certify their compliance with Kentucky's Nonparticipating Tobacco Manufacturers Act. The Attorney General may also require nonparticipating manufacturers to make the escrow payments required by KRS 131.602 in quarterly installments. This administrative regulation establishes quarterly escrow deposit and certification requirements for nonparticipating manufacturers.

Section 1. Criteria for Quarterly Escrow Deposits. The Attorney General may require quarterly escrow deposits and certifications of nonparticipating manufacturers who meet any of the following criteria:

- (1) No previous escrow deposit. Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Kentucky;
- (2) No escrow deposit for more than one (1) year. Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year;
- (3) Untimely or incomplete deposits. Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year;
- (4) Outstanding judgments. Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty;
- (5) Large sales volume. Nonparticipating manufacturers that have more than 2,500,000 of their cigarettes sold in Kentucky during a quarter; and
- (6) Other reasonable cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

Section 2. Deadline for Quarterly Escrow Deposits. Nonparticipating manufacturers who are required to make quarterly escrow deposits shall do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales that occurred during the first quarter of the year (January through March) is April 30 of the same year.

Section 3. Deadline for Submitting Quarterly Certification and Notice to Attorney General. Nonparticipating manufacturers who are required to make quarterly escrow deposits shall provide the Attorney General with their quarterly certifications and official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred during the first quarter of the year (January through March) is May 10 of the same year.

Section 4. Quarterly Periods Defined. For purposes of this administrative regulation, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Section 5. Notice to Nonparticipating Manufacturers. Any nonparticipating manufacturer required to make quarterly escrow deposits and to certify its compliance with this rule shall be notified of those requirements by first class mail sent to its last known address.

Section 6. Decertification. If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the nonparticipating manufacturer and its brand families may be decertified and removed from Kentucky's Directory of Tobacco Products Approved for Sale in Kentucky. (31 Ky.R. 888; Am. 1232; eff. 1-21-2005).